

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Bky No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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Randall L. Seaver, Trustee,

Adv. No. 09-5045

Plaintiff,

vs.

Dennis E. Hecker, Midwest Motors, LLC,  
LKMCD Properties, LLC, Chrysler Financial Services  
Americas LLC, Toyota Motor Credit Corporation,  
Inver Grove Motors LLC d/b/a Denny Hecker's  
Inver Grove Toyota, Jacob Holdings of Highway 110 LLC,  
Jacob Holdings of Akron Avenue LLC, and Toyota Financial  
Savings Bank,

Defendants.

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**NOTICE OF HEARING AND JOINT MOTION OF PLAINTIFF AND CERTAIN  
DEFENDANTS FOR EXPEDITED HEARING AND FOR AN ORDER  
CONTINUING TRIAL DATE**

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TO: The Persons and Entities Specified in Local Rule 9013-3.

1. Plaintiff Randall L. Seaver ("Trustee"), and Defendants Midwest Motors, LLC ("Midwest Motors"), LKMCD Properties, LLC, Chrysler Financial Service Americas LLC, Toyota Motor Credit Corporation, and Toyota Financial Savings Bank (collectively, "Movants"), by and through their respective undersigned attorneys, jointly move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this Motion at 9:00 a.m. on June 30, 2010, before the Honorable Robert J. Kressel in Courtroom 8 West, 300 South Fourth Street, Minneapolis, Minnesota.

3. Local Rule 9006-1(c) provides deadlines for responses to this Motion. However, given the expedited nature of the relief sought, Movants will not object to written responses being served and filed prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on June 4, 2009. The case, and this adversary proceeding, are now pending in this Court.

5. This Motion arises under 11 U.S.C. § 105, Fed. R. Bankr. P. 7005, 7007 and 9006, and is filed pursuant to Fed. R. Bankr. P. 7007 and 9006(b)(1), and Local Rules 7007-1 and 9013-1-2.

6. Movants respectfully move the Court for an order granting an expedited hearing and continuing the trial of this adversary proceeding, currently scheduled for July 16, 2010, for approximately 30 days to permit the Court to consider and rule on Movants' forthcoming motions for summary judgment and to enforce the Settlement which, if granted, would fully and finally dispose of this adversary proceeding.

7. Movants are all of the non-defaulting<sup>1</sup> parties to this adversary proceeding except Defendant Debtor Dennis E. Hecker ("Hecker"). Following lengthy and difficult negotiations,

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<sup>1</sup> Defendants Inver Grove Motors LLC d/b/a Denny Hecker's Inver Grove Toyota, Jacob Holdings of Highway 110 LLC, Jacob Holdings of Akron Avenue LLC, have not answered or otherwise responded to the Trustee's Amended Complaint and the Trustee intends to move for default judgment against these entities.

Movants have entered into a certain Settlement Agreement and Release (the “Settlement”) which, if determined to be binding on Hecker and implemented, will fully resolve all of the matters in dispute in this and a related adversary proceeding<sup>2</sup> also pending before this Court. Movants assert that the Settlement is binding upon Hecker and, based upon such assertion, will file motions for summary judgment and to enforce the Settlement, which motions are scheduled for hearing on July 7, 2010.

8. Movants desire to avoid the considerable costs of preparing for and participating in the trials of this and the related adversary proceeding if those costs can be avoided. A short continuance of the trial date to permit the Court to hear and determine the pending motions may enable all of the parties to this and the related proceeding to avoid such costs. Although counsel for Midwest Motors requested that Hecker stipulate to the continuance sought herein, Hecker has refused, necessitating this Motion. Movants submit that there is no prejudice to any party, including Hecker, if the trial date is continued as requested.

9. Expedited hearing is required because, pursuant to the Court’s Second Amended Order for Trial dated May 26, 2010 (the “Trial Order”), the trial in this proceeding is scheduled for July 16, 2010. Furthermore, the Trial Order requires the parties to confer and enter into stipulations as to the admissibility of exhibits and depositions, and facts which are not disputed, on or before July 2, and to prepare, file and serve those stipulations, witness lists, trial briefs and proposed findings of fact and conclusions of law on or before July 9, 2010. If the costs associated with these activities are to have any possibility of being avoided, the hearing on this Motion must be expedited.

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<sup>2</sup> *Mackall, Crounse & Moore, PLC v. Dennis E. Hecker, et al. (Adv. Pro. No. 10-050150).*

10. Fed. R. Bankr. P. 9006(b)(1) provides:

[e]xcept as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Movants submit that in the present circumstances good cause exists to continue the trial date and the deadlines set forth in the Trial Order for approximately 30 days.

WHEREFORE, Movants respectfully request that the Court enter its order granting an expedited hearing on the Motion and continuing the current trial date and the deadlines specified in the Trial Order as requested herein.

Dated: June 25, 2010

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PROPERTIES, LLC

Dated: June 25, 2010

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Dated: June 25, 2010

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Dated: June 25, 2010

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Dated: June 25, 2010

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424150

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Bky No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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Randall L. Seaver, Trustee,

Adv. No. 09-5045

Plaintiff,

vs.

Dennis E. Hecker, Midwest Motors, LLC,  
LKMCD Properties, LLC, Chrysler Financial Services  
Americas LLC, Toyota Motor Credit Corporation,  
Inver Grove Motors LLC d/b/a Denny Hecker's  
Inver Grove Toyota, Jacob Holdings of Highway 110 LLC,  
Jacob Holdings of Akron Avenue LLC, and Toyota Financial  
Savings Bank,

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF AND CERTAIN  
DEFENDANTS' JOINT MOTION FOR EXPEDITED HEARING AND FOR AN ORDER  
CONTINUING TRIAL DATE**

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Plaintiff Randall L. Seaver ("Trustee"), and Defendants Midwest Motors, LLC ("Midwest Motors"), LKMCD Properties, LLC, Chrysler Financial Service Americas LLC, Toyota Motor Credit Corporation, and Toyota Financial Savings Bank (collectively, "Movants"), by and through their respective undersigned attorneys, submit this Memorandum in Support of their Joint Motion for Expedited Hearing and for an Order Continuing Trial Date (the "Motion").

## **FACTS**

The relevant facts are set forth in the Movants' Motion and are incorporated herein by reference. All capitalized terms used in the Motion are hereby incorporated into this Memorandum.

## **DISCUSSION**

### **I. CAUSE EXISTS TO REDUCE NOTICE OF HEARING ON THE MOTION.**

Local Rule 9006-1(e) permits parties to seek expedited relief if cause exists. Cause exists to grant an expedited hearing on the Motion. Pursuant to the Court's Trial Order, the trial in this proceeding is scheduled for July 16, 2010. Furthermore, the Trial Order requires the parties to confer and enter into stipulations as to the admissibility of exhibits and depositions, and facts which are not disputed, on or before July 2, and to prepare, file and serve those stipulations, witness lists, trial briefs and proposed findings of fact and conclusions of law on or before July 9, 2010. If the costs associated with these activities are to have any possibility of being avoided, the hearing on this Motion must be expedited.

### **II. THE COURT SHOULD AUTHORIZE THE CONTINUANCE OF THE TRIAL DATE**

Federal Rule of Bankruptcy Procedure 9006(b)(1) provides:

[e]xcept as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Good cause exists here to continue the trial date and the deadlines set forth in the Trial Order for approximately 30 days to permit the Court to consider and rule on Movants' pending motions for summary judgment and to enforce the Settlement. Those motions, if granted, would fully and

finally dispose of this adversary proceeding.

Movants have engaged in lengthy and difficult negotiations resulting in the Settlement which, if determined to be binding on Hecker as Movants assert is the case, will fully resolve all of the matters in dispute in this and a related adversary proceeding<sup>1</sup> also pending before this Court. Movants will file motions for summary judgment asserting that the Settlement is binding upon Hecker and seeking to enforce the Settlement. These motions are scheduled for hearing on July 7, 2010.

Movants desire to avoid the considerable costs of preparing for and participating in the trials of this and the related adversary proceeding if those costs can be avoided. A short continuance of the trial date to permit the Court to hear and determine the forthcoming motions may enable all of the parties to this and the related proceeding to avoid such costs.

Although counsel for Midwest Motors requested that Hecker stipulate to the continuance sought herein, Hecker has refused, necessitating the Motion. There is no prejudice to any party, including Hecker, if the trial date is continued as requested.

### **CONCLUSION**

The Court should continue the trial date and the deadlines set forth in the Trial Order for approximately 30 days.

Dated: June 25, 2010

MACKALL, CROUNSE & MOORE, PLC

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MOTORS, LLC, and LKMCD PROPERTIES, LLC

---

<sup>1</sup> *Mackall, Crounse & Moore, PLC v. Dennis E. Hecker, et al. (Adv. Pro. No. 10-050150).*

Dated: June 25, 2010

LEONARD, O'BRIEN, SPENCER, GALE  
& SAYRE, LTD.

/e/ James M. Jorissen

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ATTORNEYS FOR PLAINTIFF  
RANDALL L. SEAVER

Dated: June 25, 2010

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BENNETT, P.A.

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ATTORNEYS FOR DEFENDANT CHRYSLER  
FINANCIAL SERVICES AMERICAS LLC

Dated: June 25, 2010

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ATTORNEYS FOR DEFENDANT TOYOTA  
MOTOR CREDIT CORPORATION

Dated: June 25, 2010

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ATTORNEYS FOR DEFENDANT  
TOYOTA FINANCIAL SAVINGS BANK

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY No.: 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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Randall L. Seaver, Trustee,

ADV Case No.: 09-5045

Plaintiff,

vs.

Dennis E. Hecker, Midwest Motors, LLC,  
LKMCD Properties, LLC, Chrysler Financial Services  
Americas LLC, Toyota Motor Credit Corporation,  
Inver Grove Motors LLC d/b/a Denny Hecker's  
Inver Grove Toyota, Jacob Holdings of Highway 110 LLC,  
and Jacob Holdings of Akron Avenue LLC, and Toyota Financial  
Savings Bank,

Defendants.

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**UNSWORN CERTIFICATE OF SERVICE**

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I hereby certify that on June 25, 2010, I caused the following documents:

*Notice of Hearing and Joint Motion of Plaintiff and Certain Defendants for  
Expedited Hearing and for an Order Continuing Trial Date, Memorandum of Law  
and Order (proposed)*

to be filed electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification pursuant to ECF and this constitutes service or notice pursuant to Local Rule 9006-1(a).

I further certify that I caused a copy of the foregoing documents to be mailed by first class mail, postage paid, to the following:

INVER GROVE MOTORS LLC  
D/B/A DENNY HECKER'S INVER GROVE TOYOTA  
500 FORD ROAD  
MINNEAPOLIS, MN 55426

JACOB HOLDINGS OF HIGHWAY 110 LLC  
500 FORD ROAD  
MINNEAPOLIS, MN 55426

JACOB HOLDINGS OF AKRON AVENUE LLC  
500 FORD ROAD  
MINNEAPOLIS, MN 55426

/e/ Stephanie Wood

Dated: June 25, 2010

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410920

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Bky No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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Randall L. Seaver, Trustee,

Adv. No. 09-5045

Plaintiff,

vs.

Dennis E. Hecker, Midwest Motors, LLC,  
LKMCD Properties, LLC, Chrysler Financial Services  
Americas LLC, Toyota Motor Credit Corporation,  
Inver Grove Motors LLC d/b/a Denny Hecker's  
Inver Grove Toyota, Jacob Holdings of Highway 110 LLC,  
Jacob Holdings of Akron Avenue LLC, and Toyota Financial  
Savings Bank,

Defendants.

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**ORDER**

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This adversary proceeding came before the Court on the motion of plaintiff and defendants Midwest Motors, LLC, LKMCD Properties, LLC, Chrysler Financial Service Americas LLC, Toyota Motor Credit Corporation, and Toyota Financial Savings Bank for an order granting an expedited hearing and continuing the current trial date.

Based upon the motion and the file, it is ORDERED:

1. The motion for expedited hearing is granted; and

2. The trial date and the deadlines set forth in the court's Second Amended Order for Trial are continued to dates to be fixed in a further amended Order for Trial.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Court Judge

424171